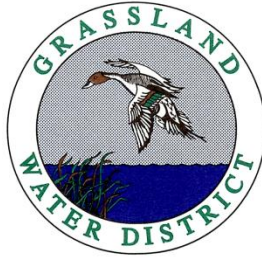


22759 S. Mercey Springs Road
Los Banos, CA 93635



(209) 826-5188
Fax (209) 826-4984
Email: veronica@gwdwater.org

BOARD OF DIRECTORS

PEPPER SNYDER
President

DOUG FEDERIGHI
Vice President

BYRON HISEY

TOM MACKEY

BOB NARDI

RICARDO ORTEGA
General Manager

VERONICA A. WOODRUFF
Treasurer/Controller

ADAMS BROADWELL JOSEPH CARDOZO PC

December 2, 2013

VIA E-MAIL

Dr. Jelena Hartman
Central Valley Regional Water Quality Control Bd.
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114
jhartman@waterboards.ca.gov

**Re: Comments on Draft Waste Discharge Requirements for
Discharges from Irrigated Lands in the Western San Joaquin
River Watershed**

Dear Dr. Hartman,

Please accept these comments from the Grassland Water District and Grassland Resource Conservation District ("GWD") on the revised draft Waste Discharge Requirements for Growers in the Western San Joaquin River Watershed ("Draft Order"). At a hearing in July, GWD addressed the Regional Water Quality Control Board ("Board") members about the benefits that managed wetlands provide and the challenges that the Draft Order poses for wetland managers. In August, GWD submitted written comments to the Board on the proposed templates for growers in the Eastern San Joaquin River Watershed (General Order R5-2012-0116), which will form the basis for the templates to be used in the Western San Joaquin River Watershed.¹ A wetland manager at the U.S. Fish and Wildlife Service submitted similar comments.² The purpose of these comments has been to point out the significant drawbacks in the Board's attempt to treat managed wetlands similar to irrigated agricultural lands.

¹ Attachment A.

² Attachment B.

1. Overview of managed wetlands in the Western San Joaquin River Watershed

The managed wetlands in the Western San Joaquin River Watershed are within the Grasslands Ecological Area (“GEA” or “Grasslands”).³ The GEA encompasses over 200,000 acres and is the largest contiguous freshwater wetland complex west of the Rocky Mountains. It hosts millions of migratory birds each year and a diverse resident population of wildlife, including threatened and endangered species. The Grasslands are located in western Merced County and comprised of private, state, and federally owned wetland areas. The Grasslands are recognized under federal law as necessary to mitigate the impacts associated with historical reclamation efforts in California, which eliminated much of the natural hydrology that once flooded these wetlands seasonally.⁴ More than 90% of California’s wetlands have been destroyed over the last 150 years, and it is critical that continued management of the wetlands that do remain must be encouraged and endorsed by state and federal public agencies, including the Board.

The GEA is of particular importance to the migratory waterfowl of the Pacific Flyway, the north-south bird route that spans North America from the arctic to the tropics. Pacific Flyway waterfowl populations average 6.6 million birds annually, and more than half of this waterfowl population spend their winters in the Grasslands, which is the single most important block of remaining wetlands in the Central Valley. The GEA is also one of the most important shorebird habitats in the western United States, and hosts one of the largest wintering shorebird populations of any inland site in western North America. The GEA is designated as a Wetland of International Importance under the Ramsar Convention on Wetlands, as a Western Hemisphere Shorebird Reserve Network Site of International Importance, and as an Audubon Important Bird Area.

2. Lack of evidence or need for requiring coverage of managed wetlands under the Draft Order

In response to comments from GWD and other wetland management agencies, the revised Draft Order acknowledges the important differences between managed wetlands and irrigated agricultural lands. Wetland management does not involve the application of fertilizers or pesticides, and wetlands are fundamentally managed in a way that prevents and minimizes sediment discharge and erosion.⁵ The Board has provided no evidence, examples, or studies to support the inclusion

³ The GEA is not associated with or served by the Grasslands Bypass Project, which addresses agricultural drainage water.

⁴ Central Valley Project Improvement Act, Public Law 102-575, Title 34, section 3406(d).

⁵ Draft Order, tentative Attachment A, “Fact Sheet,” p. 30.

of managed wetlands as “dischargers” of “pollutants” under the Draft Order. To the contrary, managed wetlands mimic nature and help to reduce water pollution.⁶ The Board even requires the construction of managed wetlands as mitigation for certain wastewater discharges, to filter water and help improve water quality.⁷

The only rationale provided by the Board for including managed wetlands among the “waste dischargers” covered by the Draft Order is that “drainage channels, access roads, or stream crossings may contribute to discharge of excess sediment.”⁸ In addition to a lack of evidence to support this conclusion, including a lack of any historical complaints about erosion or sediment from managed wetlands, there are a number of problems with the Board’s rationale.

First, because pesticides are not applied to managed wetlands, any risk of sediment discharges from managed wetlands would not include the risk of pesticide toxicity in sediment, which is one of the goals behind the Draft Order’s regulation of this pollutant.⁹ Second, the Board’s tentative Monitoring and Reporting Program already requires monitoring for turbidity and total dissolved solids in the three drainage channels that leave the Grasslands: Salt Slough, Mud Slough, and Los Banos Creek.¹⁰ Thus, any contribution of excess sediment from the Grasslands will be monitored, and corrective action taken if problems are detected.

Third, the Draft Order requires a Sediment and Erosion Control Plan only if sediment and erosion from irrigated lands is “above background levels.”¹¹ Because the GEA is a vast area of interconnected and meandering ponds, channels, berms, and natural wetland features, it would be virtually impossible to make a distinction between “background” water sediment levels and sediment from “drainage channels, access roads, or stream crossings.” Fourth, the Draft Order requires approval of Sediment and Erosion Control Plans by the local Resource Conservation District.¹² This comment letter is *submitted* by the Grassland Resource Conservation District, urging the Board not to include managed wetlands under the Draft Order because they do not contribute to sediment or erosion problems in the watershed.

Requiring wetland managers to endure the time and expense of joining a third party coalition, developing a wetland-specific farm evaluation template, and

⁶ See <http://www.watereducation.org/userfiles/ABriefingonCaliforniaWetlands.pdf>, p. 4 (wetlands are referred to as the “kidneys of the landscape”; one acre of wetlands can filter 7.3 million gallons of water per year; <http://www.ducks.org/conservation/habitat/page2>).

⁷http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/0910/cityofloyalton/loyalton_wdrs.pdf

⁸ Draft Order, tentative Attachment A, “Fact Sheet,” p. 31.

⁹ Draft Order, pp.

¹⁰ Draft Order, Attachment B, pp. 6-10.

¹¹ Draft Order, p. 23.

¹² Draft Order, p. 29.

conducting sediment and erosion assessments is simply not justified by an undocumented and unlikely potential for sediment discharges from wetlands.

3. The Draft Order contains no standards or suggestions for creating a wetland-specific farm evaluation or sediment and erosion assessment/control plan

The prior comments submitted by GWD and a wetland manager from the U.S. Fish and Wildlife Service point out that the existing farm evaluation and sediment and erosion control plan templates are inapplicable to managed wetlands. The farm evaluation template asks for information on agricultural wells (individual wetland managers do not use them), pesticide application practices, crops grown, irrigation practices (drip, furrow, sprinkler, etc.), and nitrogen management methods. These are not applicable to managed wetlands, which grow native vegetation and do not use traditional crop irrigation methods or apply nitrogen or pesticides. The farm evaluation template also includes a farm map to be kept “on site,” which poses a problem for managed wetlands that are mainly unimproved, naturally vegetated, and flooded.

The revised Draft Order responds to these concerns by authorizing a third-party entity to propose a “managed wetlands” farm evaluation template, within 60 days, which evaluates “management practices associated with managed wetlands that could affect the quality of surface water or groundwater.”¹³ This is not a standard that can be met without further direction from the Board. The Draft Order provides no examples of wetland management practices that could affect water quality, nor can GWD decipher what the Board expects. As explained in GWD’s comments, wetland management throughout the GEA mimics nature, improves water quality, and does not involve the types of agricultural activities identified in the existing templates.

The sediment and erosion control plan template contains a checklist of “irrigation practices” that do not apply to managed wetlands (drip irrigation, timing to reduce pesticide runoff, flow dissipaters, etc.), and a checklist of “cultural practices” that are either inapplicable to managed wetlands or are already implemented as a matter of course (vegetative buffers, holding ponds, native vegetation, minimum tillage, etc.).

The Draft Order does not address these concerns, but the attached Information Sheet states: “Although the wetland itself will generally act as a sedimentation basin and not contribute to excess sediment, wetland drainage channels, access roads, or stream crossings may contribute to discharge of excess sediment. The sediment discharge and erosion assessment will provide information

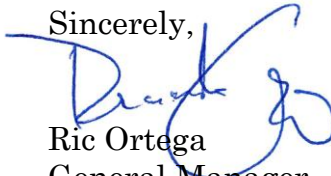
¹³ Draft Order, p. 34, and Attachment A (Information Sheet), p. 31.

on the vulnerability status of areas with managed wetlands.”¹⁴ Not only does this fail to address the issue of “background conditions” within the managed wetlands of the GEA, but it also fails to recognize that the sediment and erosion control plan template is not helpful or applicable to wetland managers. In sum, the Draft Order contains only vague statements about its applicability to managed wetlands, without providing any standards or examples of how water quality would benefit from the participation of managed wetlands.

Unlike agricultural farms, managed wetlands do not produce crops or commercial products. Wetland owners do not manage their lands for profit, but for the protection and perpetuation of an important State resource. By requiring managed wetlands to join a third party entity, pay the associated administrative costs, and develop unspecified wetland-specific templates, the Draft Order would create a burdensome financial obligation for the stewards of this important ecological resource, without evidence supporting the need for such regulation.

Thank you for considering these comments.

Sincerely,



Ric Ortega
General Manager
Grassland Water District

¹⁴ Draft Order, Attachment A (Information Sheet), p. 31.